IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 14517 of 2005(C)

AGAINST THE ORDER IN IA.2433/2000 IN
OS.510/1996 of MUNSIFF COURT, THALIPARAMBA

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PETITIONERS:
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1. M.P.PARVATHI, D/O.KRISHNAN NAIR,
MADAYI AMSOM DESOM, KANNUR TALUK.

2. M.P.PADMAVATHI, D/O.KRISHNAN NAIR,
MADAYI AMSOM DESOM, KANNUR TALUK.

3. M.P.ARAVINDAKSHAN, S/O.KRISHNAN NAIR,
PALLIKKUNNU AMSOM, CHALAD DESOM, KANNUR TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:
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1. KIZHAKKEKARAMMAL PUTHIYADATH
VELAYUDHA MARAR, S/O.LAKSHMI AMMA, RESIDING AT
MAYYIL AMSOM DESOM, TALIPARAMBA TALUK.

2. RADHAKRISHNA MARAR,
S/O.LATE LAKSHMI AMMA, RESIDING AT
CHERUTHAZHAM AMSOM DESOM, KANNUR TALUK.

3. CHANDRASEKHARAN, S/O.LAKSHMI AMMA,
RESIDING AT SREEKANDAPURAM AMSOM,
ELLARINHI, TALIPARAMBA TALUK.

4. RAMADEVI, D/O.LAKSHMI AMMA,
RESIDING AT CHIRAKKAL AMSOM DESOM,
KANNUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 14517 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE MARUPAT DEED DT.29.07.1931 EXECUTED BY THE PREDECESSOR OF PLAINTIFFS IN FAVOUR OF CHIRAKKAL KOVILAKAM.

EXT.P2 : TRUE COPY OF THE PLAINT IN OS NO.510/1996 MUNSIFF COURT TALIPARAMBA.

EXT.P3 : TRUE COPY OF THE JUDGMENT IN OS NO.510/96 DT.28.06.2000 OF THE MUNSIFF COURT, TALIPARAMBA.

EXT.P4 : TRUE COPY OF THE AFFIDAVIT ACCOMPANYING IA 799/2001 IN IA 2433/2000 IN OS 510/96 MUNSIFF COURT, TALIPARAMBA.

EXT.P5 : TRUE COPY OF THE COUNTER IN IA 799/2001 FILED BY RESPONDENTS.

EXT.P6 : TRUE COPY OF THE ORDER IN IA 799/2001 IN IA 2433/2000 IN OS NO.510/96 OF THE MUNSIFF COURT, TALIPARAMBA DT.3.11.2004.

/TRUE COPY/

PA TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 14517 OF 2005

Dated this the 8th day of August, 2007

JUDGMENT

There is no appearance for the respondents, though they have been served with notice. The impugned order is Ext.P6 under which the court below dismissed an application filed by the petitioners for getting themselves impleaded as additional respondents in the final decree proceedings. The view taken by the learned Munsiff is that the preliminary decree is already passed and the remedy of the petitioners is to challenge the preliminary decree in appropriate other proceedings.

Heard Sri.T.Sethumadhavan, counsel for the petitioner. My attention was drawn by Mr.Sethumadhavan to the various materials placed on record, particularly to Ext.P1 Marupat, and also to the plaint schedule description in Ext.P2. Mr.Sethumadhavan submitted that the claim of the plaintiff is based solely on Ext.P1 Marupat. Counsel submitted that on going through Ext.P1 and also through the measurements which are shown in Ext.P2, the extent of the plaint schedule property can only be 25 kole X 36 kole, which will be roughly 75 cents. Therefore, mentioning the extent of the property as 1 acre 50 cents is completely erroneous. The property actually available for partition between the parties to the suit is to an extent which cannot be

more than 75 cents. My attention was also drawn by Mr.Sethumadhavan also to the preliminary decree passed in this case. It is seen that in the preliminary decree proceedings also there was some dispute between the parties to the suit as to what is the extent of property available for partition and that dispute has been relegated to the final decree stage. Mr.Sethumadhavan submitted that the only contention which the petitioners raised and pursued in the final decree proceedings is their main contention that the actual extent of the property available for partition between the parties of the suit is only 75 cents. The petitioners do not propose to claim any share for themselves in the plaint schedule property.

On considering the submissions of Mr.Sethumadhavan, I am of the view that the learned Munsiff was not justified in dismissing the application observing that the petitioners will have to appeal against the final decree. After all, even for the passage of supplementary preliminary decree there is power in the court. The court itself under the preliminary decree has relegated the question of the actual extent of the property available for partition to final decree proceedings. I therefore set aside the impugned order and allow the impleadment application.

PIUS C. KURIAKOSE, JUDGE

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